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Ad Hoc Committee on Sovereign Debt Restructuring Processes
3-5 February, 28-30 April and 27-28 July 2015

Report of the Ad Hoc Committee on Sovereign Debt Restructuring Processes

Rapporteur: Mr. Khaled **Benamadi** (Algeria)

I. Organizational and other matters

A. Opening and duration of the session

1. In accordance with General Assembly resolution 69/247, of 29 December 2014, the Ad Hoc Committee on Sovereign Debt Restructuring Processes held three working sessions in 2015. The first working session was held from 3 to 5 February, the second from 28 to 30 April and the third on 27 and 28 July. The Ad Hoc Committee held 12 plenary meetings.

2. The 1st meeting of the Ad Hoc Committee, on 3 February, was opened by Denis G. Antoine (Grenada), Acting President of the sixty-ninth session of the General Assembly.

B. Election of officers

3. At its 1st meeting, on 3 February, the Ad Hoc Committee elected, by acclamation, Sacha Sergio Llorenti Soliz (Plurinational State of Bolivia) as Chair and Niluka Kadurugamuwa (Sri Lanka) as Vice-Chair.

4. At its 4th meeting, on 5 February, the Ad Hoc Committee elected, by acclamation, Khaled Benamadi (Algeria) as Rapporteur.

5. At its 6th meeting, on 28 April, the Ad Hoc Committee elected, by acclamation, Hanum Ibrahimova (Azerbaijan) as Vice-Chair.

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C. Agenda and organization of work

6. At its 1st meeting, on 3 February, the Ad Hoc Committee adopted the provisional agenda as contained in document A/AC.284/2015/1. The agenda was as follows:

1. Election of officers.
2. Adoption of the agenda and other organizational matters.
3. A multilateral legal framework for sovereign debt restructuring processes.
4. Adoption of the report of the Ad Hoc Committee.

7. Also at its 1st meeting, the Ad Hoc Committee approved the proposed programme of work for its first working session, as circulated in an informal paper.

8. At its 6th meeting, on 28 April, the Ad Hoc Committee approved the proposed programme of work for its second working session, as circulated in an informal paper.

9. At its 11th meeting, on 27 July, the Ad Hoc Committee approved the proposed the proposed programme of work for its third working session, as circulated in an informal paper.

D. Attendance

10. The three working sessions were attended by representatives of States Members of the United Nations. Representatives of organizations of the United Nations system, observers for intergovernmental organizations and representatives of non-governmental organizations also attended. The list of participants is contained in document A/AC.284/2015/INF/1.

II. A multilateral legal framework for sovereign debt restructuring processes

11. The Ad Hoc Committee considered agenda item 3, "A multilateral legal framework for sovereign debt restructuring processes", at the 1st to 5th meetings of its first working session, from 3 to 5 February 2015; at the 6th to 10th meetings of its second working session, from 28 to 30 April 2015; and at the 11th and 12th meetings of its third working session, from 27 to 28 July 2015.

A. First working session

12. At the 1st meeting, on 3 February, the keynote speaker, Jose Antonio Ocampo, Director of the School of International and Public Affairs at Columbia University, addressed the Ad Hoc Committee and responded to the comments made and the questions posed by the representatives of Jamaica, Benin and China.

13. At the same meeting, the Ad Hoc Committee began the general discussion of the item and heard statements by the representatives of South Africa (on behalf of the Group of 77 and China), Uruguay (on behalf of the Union of South American

Nations (UNASUR)), Maldives (on behalf of the Alliance of Small Island States), the Russian Federation, Sri Lanka, Antigua and Barbuda, Nicaragua, Ecuador, Brazil, Argentina, China, Egypt and Singapore.

14. Also at the same meeting, statements were made by the representatives of the following non-governmental organizations: International Insolvency Institute and Center of Concern of the International Cooperation for Development and Solidarity.

15. At the 2nd meeting, on 4 February, the Ad Hoc Committee continued its general discussion of the item and heard statements by the representatives of Mexico and Malaysia.

1. Panel discussion on "Gaps in the current restructuring system"

16. At the 2nd meeting, on 4 February, the Ad Hoc Committee held a panel discussion on the topic "Gaps in the current restructuring system", moderated by the Chair, and heard presentations by the following panellists: Benu Schneider, Senior Economic Affairs Officer, Financing for Development Office, Department of Economic and Social Affairs; Anna Gelpern, Professor of Law, Georgetown University; and Richard Kozul Wright, Director, Division on Globalization and Development Strategies, United Nations Conference on Trade and Development (UNCTAD).

17. The Ad Hoc Committee then held an interactive discussion, during which the panellists responded to the comments made and the questions posed by the representatives of South Africa, El Salvador and Argentina.

18. The representative of the European Network on Debt and Development, a non-governmental organization, participated in the discussion.

2. Panel discussion on "Options for moving forward"

19. Also at the 2nd meeting, on 4 February, the Ad Hoc Committee held a panel discussion on the topic "Options for moving forward", moderated by the Chair, and heard presentations by the following panellists: Yuefen Li, Special Advisor, Economics and Development Finance, South Centre; Eric LeCompte, Executive Director, Jubilee USA Network; and Hans Humes, Chairman and Chief Executive Officer, Greylock Capital.

20. The Ad Hoc Committee then held an interactive discussion, during which the panellists responded to the comments made and the questions posed by the representatives of Uganda, China and Senegal.

3. Panel discussion on "Resolving economic disputes multilaterally: lessons from experience"

21. At the 3rd meeting, on 4 February, the Ad Hoc Committee held a panel discussion on the topic "Resolving economic disputes multilaterally: lessons from experience", moderated by the Chair, and heard presentations by the following panellists: Kevin Paul Gallagher, Associate Professor, Boston University; Sonia E. Rolland, Professor of Law, Northeastern University School of Law; Garth Schofield, Senior Legal Counsel, Permanent Court of Arbitration; and Enrique Cosio-Pascal, Independent Expert of the Paris Club.

22. The Ad Hoc Committee then held an interactive discussion, during which the panellists responded to the comments made and the questions posed by the representatives of China and Singapore.

23. The representative of the Financing for Development Office, Department of Economic and Social Affairs, participated in the discussion.

24. The representative of the European Network on Debt and Development, a non-governmental organization, also participated in the discussion.

4. Panel discussion on "The political economy of debt restructuring"

25. At the 4th meeting, on 5 February, the Ad Hoc Committee held a panel discussion on the topic, "The political economy of debt restructuring", moderated by the Vice-Chair (Sri Lanka), and heard presentations by the following panellists: James Haley, Senior Fellow, Centre for International Governance Innovation; Odette Lienau, Associate Professor of Law, Cornell University; and Mark Weidemaier, Associate Professor of Law, University of North Carolina at Chapel Hill.

26. The Ad Hoc Committee then held an interactive discussion, during which the panellists responded to the comments made and the questions posed by the representatives of South Africa (on behalf of the Group of 77 and China) and Singapore.

27. The representative of the Financing for Development Office, Department of Economic and Social Affairs, participated in the discussion.

28. A statement was also made by the representative of the non-governmental organization, Bread for the World (also on behalf of the Centre for International Governance Innovation).

5. Panel discussion on "Standstills, roll-overs and write-offs: economic perspectives"

29. Also at the 4th meeting, on 5 February, the Ad Hoc Committee held a panel discussion on the topic "Standstills, roll-overs and write-offs: economic perspectives", moderated by the Vice-Chair (Sri Lanka), and heard presentations by the following panellists: Yilmaz Akyuz, Chief Economist, South Centre; Barry Herman, Assistant Professor, The New School for Public Engagement; and Martin Guzman, Postdoctoral Research Fellow, Faculty of Business, Columbia University.

30. The Ad Hoc Committee then held an interactive discussion, during which the panellists responded to the comments made and the questions posed by the representative of Argentina.

31. The representative of the International Insolvency Institute, a non-governmental organization, participated in the discussion.

6. Interactive discussion on "Possible elements of a multilateral legal framework for sovereign debt restructuring process and the way forward"

32. At the 5th meeting, on 5 February, the Ad Hoc Committee held an interactive discussion on the topic "Possible elements of a multilateral legal framework for sovereign debt restructuring process and the way forward" and heard a statement by the Chair.

33. At the same meeting, a statement was made by the Director of the Division on Globalization and Development Strategies, UNCTAD.

34. Also at the same meeting, statements were made by the representatives of South Africa (on behalf of the Group of 77 and China), Brazil, Argentina, China, Singapore, Ecuador, Egypt, Indonesia and Chile.

B. Second working session

35. At the 6th meeting, on 28 April, the Chair (Plurinational State of Bolivia) opened the second working session and made a statement.

36. At the 7th meeting, on 28 April, the Chair presented an informal paper entitled "Towards a multilateral debt restructuring process: principles, elements and institutional options", after which statements were made by the representatives of South Africa (on behalf of the Group of 77 and China), Ecuador (on behalf of the Community of Latin American and Caribbean States), Argentina, Cuba, China, and Ecuador.

37. At the same meeting, a statement was made by the representative of the Economic Commission for Latin America and the Caribbean.

1. Interactive discussion on "Guiding principles: legitimacy, impartiality, transparency, good faith and sustainability"

38. At its 6th and 8th meetings, on 28 and 29 April, the Ad Hoc Committee held an interactive discussion on the topic "Guiding principles: legitimacy, impartiality, transparency, good faith and sustainability".

39. At the 6th meeting, the keynote speaker, Richard Conn, Principal and Managing Partner of Innovate Partners, LLC, addressed the Ad Hoc Committee.

40. At the same meeting, the Ad Hoc Committee heard a statement by Hugo Martinez, Minister for Foreign Affairs of El Salvador.

41. Also at the same meeting, statements were made by the representatives of Uruguay (on behalf of UNASUR), Guatemala, China, the Sudan, Nicaragua and Egypt.

42. Also at the 6th meeting, the representative of the European Network on Debt and Development, a non-governmental organization, participated in the discussion.

43. At the same meeting, the Director of the Division on Globalization and Development Strategies, UNCTAD, also participated in the discussion.

44. Also at the same meeting, the keynote speaker and the Minister for Foreign Affairs of El Salvador responded to the comments made and the questions posed during the interactive discussion.

45. At the 8th meeting, Axel Kicillof, Minister of the Economy and Public Finance of Argentina, addressed the Ad Hoc Committee.

46. At the same meeting, the Ad Hoc Committee heard presentations by the Director of the Division on Globalization and Development Strategies, UNCTAD, and the Special Advisor of the Economics and Development Finance of the intergovernmental organization, South Centre.

47. Also at the same meeting, statements were made by the representatives of the Plurinational State of Bolivia, Cuba, Brazil, Sri Lanka, Guatemala and Singapore.

48. Also at the 8th meeting, the Minister of the Economy and Public Finance of Argentina responded to the comments made and the questions posed by delegations.

2. Interactive discussion on "Latest developments in the contractual approach and why it is not enough"

49. At the 7th meeting, on 28 April, the Ad Hoc Committee held an interactive discussion on the topic "Latest developments in the contractual approach and why it is not enough" and heard a presentation by Alexey Belov, Head of Debt Capital Markets, Department of Public Debt and Sovereign Financial Assets, Ministry of Finance of the Russian Federation.

50. At the same meeting, a statement was made by the representative of Brazil.

51. Also at the same meeting, the representative of the intergovernmental organization, South Centre, participated in the discussion.

52. Also at the 7th meeting, the representative of the African Forum and Network on Debt and Development, a non-governmental organization, participated in the discussion.

53. At the same meeting, the Director of the Division on Globalization and Development Strategies, UNCTAD, and the Chair made statements.

3. Interactive discussions on "The way forward" and "Problems of litigation against heavily indebted poor countries (HIPCs)"

54. At its 9th and 10th meetings, on 29 and 30 April, the Ad Hoc Committee held interactive discussions on the topics "The way forward" and "Problems of litigation against heavily indebted poor countries (HIPCs)".

55. At the 9th meeting, on 29 April, the Ad Hoc Committee heard presentations by the Director and a representative of the Division on Globalization and Development Strategies, UNCTAD.

56. At the same meeting, statements were made by the representatives of China and Argentina.

57. Also at the same meeting, the representatives of the non-governmental organizations, International Trade Union Confederation and European Network on Debt and Development, made statements.

58. Also at the 9th meeting, the Director and a representative of the Division on Globalization and Development Strategies, UNCTAD, responded to the statements made by the delegations.

59. At the 10th meeting, the Ad Hoc Committee heard a statement by the Chair.

60. At the same meeting, statements were made by the representatives of Cuba, Argentina, the Bolivarian Republic of Venezuela, China and Ecuador.

61. Also at the same meeting, the representative of International Insolvency Institute, a non-governmental organization, participated in the discussion.

C. Third working session

62. At the 11th meeting, on 27 July, the Chair of the Ad Hoc Committee opened the third working session and made a statement.

63. At the same meeting, Carlos Alberto Bianco, Secretary of International Economic Relations, Ministry of Foreign Affairs and Worship of Argentina, addressed the Ad Hoc Committee.

64. Also at the same meeting, the Chair made a statement, during which he introduced the Chair's summary (see sect. III below), which was also circulated as an informal paper in English only, and announced that it would be included in the final report of the Ad Hoc Committee.

65. At the same meeting, following the introduction of the Chair's summary, statements were made by the representatives of South Africa (on behalf of the Group of 77 and China), Paraguay (on behalf of the Common Market of the Southern Cone), Uruguay (on behalf of UNASUR), Haiti (on behalf of the Caribbean Community), Maldives (on behalf of the Alliance of Small Island States), the Bolivarian Republic of Venezuela (on behalf of the Bolivarian Alliance for the Peoples of Our America), Nicaragua, Cuba, Antigua and Barbuda, Brazil, Sri Lanka, China, Chile, Singapore and Ecuador.

66. At the 12th meeting, on 28 July, Denis Antoine (Grenada), Acting President of the sixty-ninth session of the General Assembly, addressed the Ad Hoc Committee.

67. At the same meeting, the keynote speaker, Joseph Stiglitz, Professor at Columbia University and recipient of the Nobel Memorial Prize in Economic Sciences, made a presentation and responded to the statement made by the representative of El Salvador.

68. Also at the same meeting, the keynote speaker responded to the statements made by the representatives of the following non-governmental organizations: European Network on Debt and Development and Jubilee USA Network.

69. Also at the 12th meeting, the Ad Hoc Committee heard a statement by the Director of the Division on Globalization and Development Strategies, UNCTAD.

III. Chair's summary of the discussions

70. At the 11th meeting, on 27 July, the Chair's summary was introduced and circulated as an informal paper in English only. The Chair's summary reads as follows:

Overview

The current international debt restructuring system suffers from problems of fragmentation, inefficiencies and protracted negotiations, which lead to a lack of growth-oriented solutions to the debt problems of developing countries and challenges to developed countries. Furthermore, the activities of non-cooperative litigating creditors continue to add to the uncertainty of post-debt restructuring outcomes. The inability of the international financial community to prevent or promptly resolve debt problems as they arise is financially costly and quickly triggers development losses in areas where gains

have been painstakingly made. This fundamentally impairs the ability of a country to maintain a sustainable development path.

Heads of State and Government and other representatives also recently recognized in the Addis Ababa Action Agenda that debtors and creditors must work together to prevent and resolve unsustainable debt situations. The importance of debt restructurings being timely, orderly, effective, fair and negotiated in good faith was reaffirmed.

Consultation process

The consultations of the Chair of the Ad Hoc Committee (Plurinational State of Bolivia) were carried out taking into consideration the above mentioned gaps and challenges.

The consultation process was conducted by the Chair with the aim of including and reaching out to all Member States and all institutional stakeholders. The work of the Ad Hoc Committee on Debt Restructuring Processes was comprised of three plenary working sessions, academic contributions, informal consultations, discussion on the Chair's Elements Paper on Sovereign Debt Restructuring Processes and negotiations on the Principles on Sovereign Debt Restructuring Processes.

Importance of the Principles

During the consultations it was emphasized that solutions need to be found that foster greater financial stability by reducing excessive risk-taking while ensuring a fairer and more efficient resolution of debt crises when they happen. In order to improve the international sovereign debt restructuring practices, a set of Principles were recognized by the Committee.

The Chair believes that the work undertaken by the Ad Hoc Committee will enable further discussions on debt issues. The Principles on Sovereign Debt Restructuring Processes, which are the result of the work of the Ad Hoc Committee, are expected to contribute to enhancing the efficiency, stability and predictability of the international financial system and promote the achievement of sustainable growth and development, in accordance with national priorities, and the respect of human rights.

The set of Principles are listed and described below:

Principles on Sovereign Debt Restructuring Processes

1. A sovereign State has the right, in the exercise of its discretion, to design its macroeconomic policy, including restructuring its sovereign debt, which should not be frustrated or impeded by any abusive measures. Restructuring should be done as the last resort, preserving at the outset creditors' rights.

2. Good faith by both the sovereign debtor and all its creditors would entail their engagement in constructive sovereign debt restructuring workout negotiations and other stages of the process with the aim of a prompt and durable re-establishment of debt sustainability and debt servicing, as well as achieving the support of a critical mass of creditors through a constructive dialogue regarding the restructuring terms.

3. Transparency should be promoted in order to enhance the accountability of the actors concerned, which can be achieved through the timely sharing of both data and processes related to sovereign debt workouts.

4. Impartiality requires that all institutions and actors involved in sovereign debt restructuring workouts, including at the regional level, in accordance with their respective mandates, enjoy independence and refrain from exercising any undue influence over the process and other stakeholders or engaging in actions that would give rise to conflicts of interest or corruption, or both.

5. Equitable treatment imposes on States the duty to refrain from arbitrarily discriminating among creditors, unless a different treatment is justified under the law, is reasonable and is correlated to the characteristics of the credit, guaranteeing intercreditor equality, discussed among all creditors. Creditors have the right to receive the same proportionate treatment in accordance with their credit and its characteristics. No creditors or creditor groups should be excluded ex ante from the sovereign debt restructuring process.

6. Sovereign immunity from jurisdiction and execution regarding sovereign debt restructurings is a right of States before foreign domestic courts and exceptions should be restrictively interpreted.

7. Legitimacy entails that the establishment of institutions and the operations related to sovereign debt restructuring workouts respect requirements of inclusiveness and the rule of law, at all levels. The terms and conditions of the original contracts should remain valid until such time as they are modified by a restructuring agreement.

8. Sustainability implies that sovereign debt restructuring workouts are completed in a timely and efficient manner and lead to a stable debt situation in the debtor State, preserving at the outset creditors' rights while promoting sustained and inclusive economic growth and sustainable development, minimizing economic and social costs, guaranteeing the stability of the international financial system and respecting human rights.

9. Majority restructuring implies that sovereign debt restructuring agreements that are approved by a qualified majority of the creditors of a State are not to be affected, jeopardized or otherwise impeded by other States or a non-representative minority of creditors, who must respect the decisions adopted by the majority of the creditors. States should be encouraged to include collective action clauses in their sovereign debt to be issued.

IV. Adoption of the report of the Ad Hoc Committee

71. At the 12th meeting, on 28 July, the Rapporteur introduced the draft report of the Ad Hoc Committee on its three working sessions, as contained in document A/AC.284/2015/L.1.

72. At the same meeting, the Ad Hoc Committee adopted the draft report and entrusted the Rapporteur with its finalization for submission to the General Assembly prior to the conclusion of the sixty-ninth session.

V. Conclusion of the work of the Ad Hoc Committee

73. At the 12th meeting, on 28 July, the Ad Hoc Committee heard statements by the representatives of South Africa (on behalf of the Group of 77 and China), El Salvador, the Bolivarian Republic of Venezuela and Argentina.

74. At the same meeting, the Chair made closing remarks and declared the work of the Ad Hoc Committee concluded.